APPENDIX A

86th CONGRESS
1st Session

H. R. 2717

A BILL

For the relief of Eber Brothers Wine and Liquor Corporation.

[1] *Be it enacted by the Senate and House of Representa-* [2] *tives of the United States of America in Congress assembled,* [3] That notwithstanding any statute of limitations, including [4] the limitations of section 322(b) of the Internal Revenue [5] Code of 1939, the Eber Brothers Wine and Liquor Cor- [6] poration of Rochester, New York, shall be permitted to [7] file its claims under section 322 of the Internal Revenue [8] Code of 1939 for the refund of overpayments of income taxes [9] for fiscal years 1947 and 1948 which resulted from the fact [10] that profit from the sale of certain warehouse receipts was [11] treated as ordinary income when, subsequently, it was estab- [1] lished that such income should have been accorded capital [2] gains treatment under the law; and if those claims are found [3] to be meritorious, authority is hereby provided for the pay- [4] ment of such refunds. [5] SEC. 2. The United States shall not be liable for any [6] interest on any portion of any such claim for any period [7] prior to the date on which such claim is filed with the Secre- [8] tary of the Treasury or his delegate pursuant to this Act.

APPENDIX B

OPINION AND FINDINGS BELOW

(See Opposite ☞)

In the United States Court of Claims

No. 126–60

(Decided October 16, 1964)

EBER BROS. WINE & LIQUOR CORPORATION v. THE UNITED STATES

Justin N. Feldman for plaintiff. *James M. Landis* and *Margaret Taylor* of counsel.

Irving Jaffe, with whom was *Assistant Attorney General John W. Douglas*, for defendant. *M. Morton Weinstein* and *Edna P. Goldberg* were on the brief.

Before JONES, *Senior Judge;* WHITAKER, *Senior Judge;* LARAMORE, DURFEE, and DAVIS, *Judges.*

OPINION

DAVIS, *Judge*, delivered the opinion of the court:

This is a suit on a private bill passed by both Houses which, the plaintiff says, became law when the President failed to veto it within the time prescribed by the Constitution. The defense is that the President validly returned the bill without his approval within the proper time, and that the Congress did not repass the measure. It is agreed that if the bill became law plaintiff is entitled to recover, otherwise not. The only issue is whether the President vetoed and returned the bill "within ten days (Sundays excepted) after it" was "presented to him."

Having been refused (on limitations grounds) a refund of income tax overpayments for 1947 and 1948, plaintiff sought legislative relief. H.R. 2717 of the 86th Congress

745–743—64——1

would waive the time-bar and permit the claims to be considered on their merits.[1] The bill passed the House of Representatives on March 17, 1959, and the Senate on August 27, 1959. It was signed by the Speaker and the presiding officer of the Senate and then delivered by a messenger of the House of Representatives to the White House on August 31, 1959.

On that day President Eisenhower was abroad, on an official visit to nations of the North Atlantic Treaty Organization. He had departed the country on August 26th and he did not return until September 7th. In preparation for this trip, the President had told his staff that, so far as possible, he wanted Congressional bills to be held in Washington until his return. It was decided to stamp bills received at the White House during his absence with the legend, "Held for presentation to the President upon his return to the United States." The White House legislative clerks were instructed to use this stamp on all such bills, as well as on the receipts given to Congress. Before the President's departure, a member of his staff discussed the problem, including the use of this new stamp, with Congressional leaders, but we do not know whether they agreed to the procedure or expressed any view at all.

When H.R. 2717 was delivered to the White House on August 31, 1959, the legislative clerk inadvertently failed, at first, to follow his instructions and did not use the new stamp. He simply noted, in the customary form, that the White House had received the measure. About two-and-a-half hours later, when the oversight came to his attention, he attempted to amend the receipt by adding the words "Held for presentation," etc. This modification was shortly brought to the attention of the House. The new legend was also stamped on the enrolled bill.[2]

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[1] It was highly probable that the elimination of the time-bar would result in a refund since the Internal Revenue Service had already acceded to refund claims raising the same point for non-barred years.

[2] H.R. 2717 and 12 other bills were the first to be received from the House of Representatives after the President's departure (on August 26th). The legislative clerk made the same mistake as to the entire group and that mistake was soon corrected as to the entire group. Previously, the Senate had delivered four bills on August 27th and one bill on August 31st. The new stamp had been immediately used on these prior bills and their receipts. It was also used on the 54 measures which were delivered, during the President's absence, after the group which included H.R. 2717.

Upon the President's return to the United States on September 7th, the White House placed on H.R. 2717 a stamp showing that the bill was presented to him on that date. On September 14, 1959, while the Congress was still in session, the President returned the bill to the House of Representatives with a veto message. This was more than ten days (Sundays excepted) from the time the measure was delivered to the White House on August 31st, but less than ten days (Sundays excepted) from September 7th when the President returned to the country and the White House indicated that the bill had been presented to him. The House of Representatives did not reconsider H.R. 2717 and it was not published as a private law. The Congress remained in session until about daybreak of September 15, 1959.

The theory of President Eisenhower, and of the defendant here, is that in these circumstances the President had the power to direct postponement of presentation to him until his return from abroad. The plaintiff's position is that bills are customarily presented to the President through delivery to the White House and that practice cannot be altered without agreement by both the legislative and the executive branches. Since no such agreement has been shown, the President's time expired, plaintiff says, several days before his veto message, and accordingly H.R. 2717 became law without his signature.

I

The timeliness of the President's return of the bill must be adjudged under the constitutional provision (Art. I, section 7) that "if any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."[3] Every President and every Congress have been

[3] The full text of the constitutional provisions on the President's veto power is as follows:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to recon-

governed by these words, but neither the naked language nor the vestments of history furnish a definitive answer to the precise problem before us.[4] That problem lay latent until this century was well launched. President Taft was the first chief executive to leave the continental United States while Congress was in session, but the question was still dormant in his time since no bill was sent to the White House during his absence. Prior to the occasion (in 1959) leading to the present case, the issue of how to handle bills received at the White House during a President's absence abroad arose during the tenures of Presidents Wilson, Franklin D. Roosevelt, Truman, and Eisenhower.[5] If the recent past is indeed prologue, the question cannot be dismissed as transient. The combination of increased presidential mobility and concern with foreign affairs together with prolonged congressional sessions is likely to result in a recurrent pattern of presidential travel abroad even while Congress is sitting. The problem will doubtless endure.

Like most of the Constitution, the simple words of the controlling clause carry the interpreter part way but do not automatically unlock all the doors. The ultimate solution must, as so often, be sought through the principles behind the language. In this instance, that policy has already been

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sider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

"Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

[4] For a general discussion of the presidential veto, see Zinn, *The Veto Power of the President* (1951), reprinted in 12 F.R.D. 207. Mr. Zinn was and is the Law Revision Counsel of the Committee on the Judiciary of the House of Representatives.

[5] As shown below, the practice during those periods has not been uniform.

articulated by the Supreme Court. "The constitutional provisions have two fundamental purposes; (1) that the President shall have suitable opportunity to consider the bills presented to him, and (2) that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are the requisite votes." *Wright* v. *United States*, 302 U.S. 583, 596 (1938). See, also, *Edwards* v. *United States*, 286 U.S. 482, 486, 493 (1932); *The Pocket Veto Case*, 279 U.S. 655, 677–78 (1929); *La Abra Silver Mining Co.* v. *United States*, 175 U.S. 423, 454–55 (1899). "The faithful and effective exercise of this momentous duty necessarily requires time in which the President may carefully examine and consider a bill and determine, after due deliberation, whether he should approve or disapprove it, and if he disapproves it, formulate his objections for the consideration of Congress. To that end a specified time is given, after the bill has been presented to him, in which he may examine its provisions and either approve it or return it, not approved, for reconsideration. * * * The power thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly. And it is just as essential a part of the constitutional provisions, guarding against ill-considered and unwise legislation, that the President, on his part, should have the full time allowed him for determining whether he should approve or disapprove a bill, and if disapproved, for adequately formulating the objections that should be considered by Congress, as it is that Congress, on its part, should have an opportunity to re-pass the bill over his objections." *The Pocket Veto Case*, *supra*, 279 U.S. at 677–78 (footnotes and citations omitted). "Where the President does not approve a bill, the plan of the Constitution is to give to the Congress the opportunity to consider his objections and to pass the bill despite his disapproval. It is for this purpose that the time limit for return is fixed. This opportunity is as important as that of the President." *Wright* v. *United States*, *supra*, 302 U.S. at 596. The time limit is fixed "so that the status of measures shall not be held indefinitely in abeyance

through inaction on the part of the President." *Edwards* v. *United States*, *supra*, 286 U.S. at 486.[6]

These complementary policies interact, of course, with the precise words of the Constitution. The chief linguistic key is the requirement that every bill "be *presented* to the *President*" and should be acted on within ten days (Sundays excepted) "after it shall have been *presented* to *him*" (emphasis added). The Presidency may be an institution but the President is an individual. Constitutional power is vested in his person. Certain actions he can appoint others to take for him, but he alone can approve or veto legislation; that authority cannot be delegated. Whatever the help a President may have, the ultimate decision must be his. And to decide he must have time. He is neither a rubber-stamp nor an instantaneous computer. For many bills action may be easy, but there will always be a considerable number which call for consultation, deliberation, or the gathering of information.

We think, too, that it is now settled that the President's constitutional power, unlike that of some governors of states, can physically be exercised anywhere. See Corwin, *The President: Office and Powers* (4th rev. ed. 1957), pp. 55, 281, 346–47; Miller, *Some Legal Aspects of the Visit of President Wilson to Paris*, 36 Harv. L. Rev. 51, 57, 60, 61, 62, 72, 76–77, 78 (1922). The District of Columbia is the seat of government (4 U.S.C. §§ 71–73), but our whole history demonstrates that the President does not lose his authority when he acts outside Washington or the White House; he can and does sign bills elsewhere, whether on official trips or working vacations. The President's official status is not even confined to the United States; many bills have been signed abroad (see findings 20–23). During his term of office the President is vested with his constitutional powers at all times and wherever he may be.[7] Although the District of Columbia is

[6] Under these postulates, the Supreme Court has ruled that the President can approve a bill (within the eleven or twelve days) during an interim recess of the Congress (*La Abra Silver Mining Co.* v. *United States*, *supra*) and after Congressional adjournment (*Edwards* v. *United States*, *supra*); that a "pocket veto" is effective upon the adjournment of the first session of a Congress (*The Pocket Veto Case*, *supra*); and that the President can return a bill without his approval during a 3-day recess of one House (*Wright* v. *United States*, *supra*).

[7] The problem of disability presents different considerations and involves other constitutional texts and tests.

normally his post, he is free to perform his functions at the places he deems appropriate and desirable. He may go or be called anywhere in the country and he may serve abroad.[8]

It is also important that, under the careful words of the Constitution, the President's limited time for considering a bill does not begin until the measure is *presented* to him. That period does not mechanically commence at the end of the passage of the bill through the Congress. A further step is necessary, and the initiation of that step—presentation to the President—lies with the Congress. It has not been unknown for Congressional leaders to delay, for one or another reason, the presentation of bills to the President. See Miller, *supra*, 36 Harv. L. Rev. at 68, 76; Corwin, *supra*, pp. 281, 473–74. Conversely, the routine process of presentation can be accelerated if there be need. Always, however, the time for the President's deliberation runs from the bill's presentation to him.

From this review of the Constitution's phrasing and of the Constitution's policy there emerges a linked series of significant considerations: The President alone can approve or disapprove a bill. At any particular time, he can lawfully be at any place he deems appropriate, and he can lawfully take action there; in particular, it is inherent in his position that he can properly go abroad while and as President. In no case, however, does his time to evaluate a bill commence until it is presented to him. A "fundamental purpose of the constitutional provision" is "to provide appropriate opportunity for the President to consider the bills presented to him" (*Edwards* v. *United States*, *supra*, 286 U.S. at 493) and the time given him by the Constitution cannot be "lessened, directly or indirectly" (*The Pocket Veto Case*, *supra*, 279 U.S. at 678). The President, for his part, is not to be free to override the Congressional will by delaying his action beyond the stipulated time or holding a measure in suspense at his own will. Within the constitutional scheme, there is

[8] The last clause of Article I, section 5, of the Constitution seems to imply that the Houses of Congress can, by mutual consent, sit elsewhere than at the seat of Government. Section 27 of Title 2 of the U.S. Code (derived from the Act of April 3, 1794, c. 17, 1 Stat. 353) provides that when the President believes that, "from the prevalence of contagious sickness, or the existence of other circumstances", it would be "hazardous to the lives or health of the members to meet at the seat of Government," he can "convene Congress at such other place as he may judge proper."

large leeway, through mutual arrangement and understanding, for the President and Congress to accommodate each other's needs and interests. But the veto provisions of the Constitution were also designed to apply in eras of hostility, coolness, partisan tactics, or simple lack of concern. If the President feels the need of the full constitutional period, Congress should not be able to diminish it, deliberately or by accident, by delivering bills in such a way that the President would not have the full eleven or twelve days for deliberation and consultation.[9] On the other hand, when Congress affirmatively desires presidential action to be prompt,[10] the President should not be able to evade or prolong the constitutional span by absenting himself or refusing to receive the measure. Neither the President nor the Congress should be free to ignore the other's interests; but neither should be dependent on the other's grace.

We believe that these factors-in-contention are best harmonized, in the spirit of the aphorism that "the Constitution is not a code of administrative procedure, but a frame of government" (*United States* v. *Weil*, 29 Ct. Cl. 523, 546 (1894)), by utilizing the instrument the Constitution has provided through its concept of "presentation"—though personal presentation to the President is not mandatory, either the Congress or the President can insist on such delivery. If personal delivery is not demanded by either side, presentation can be made in any agreed manner or in a form established by one party in which the other acquiesces; that has long been done, for normal occasions, by the continued understanding that delivery to the White House is effective presentation to the President.[11] But the right of either side

[9] On the constitutional plane it is no answer that, in modern times, Presidents have established systems under which reports on bills are routinely made by interested departments and agencies, and that this process can be begun and completed without the personal initiation or even knowledge of the President (*e.g.*, after delivery to the White House). There will always be bills for which a President feels that, despite all the aid he receives, he requires the full period for his personal consideration or consultation, or to resolve doubts. There is also no guarantee that future Presidents will maintain the current system.

[10] To avoid, for instance, a pocket veto at the end of a session, or so that a bill can be put promptly into effect by repassage over a veto.

[11] It is to this arrangement that the Supreme Court pointed when it referred to "presenting a bill to the President by sending it to the White House in his temporary absence. Such a presentation is familiar practice. The bill is sent by a messenger and is received by the President." *Wright* v. *United States*, *supra*, 302 U.S. at 590.

to insist on personal presentation is the device-of-last-resort by which both can ultimately protect their respective interests as sanctioned by the Constitution. This primacy of the right of personal presentation is wholly fitting; it is a natural reading of the directive, that every bill shall before becoming a law "be presented to the President of the United States", that it shall be delivered to him personally (or to an immediate aide)—unless the President is willing to receive it, and the Congress to present it, in some other fashion. See Corwin, *The President*, *supra*, p. 281.[12]

To recapitulate, we see the operation of the constitutional scheme in this way: The President can, if he wishes, insist that bills be presented to him personally by an organ designated by Congress (*i.e.*, through its messenger or committee) wherever he may be; as a corollary, the President must make himself reasonably available to the Congressional messenger or committee if he desires a personal presentation. The President can, however, dispense with personal presentation and accept bills through some other procedure. He has the choice of a method, short of personal presentation, which he is willing to accept at any particular time; the Congress has the right to rely on and follow such a procedure established by the President until it has been informed, in some manner, that a new system has been substituted. But at any time if the Congress desires a speedier presentation, it can reject a substitute procedure established by the President and insist on personal presentation, in reasonable circumstances, and the President has to make himself available (or offer an equally speedy acceptance). Conversely, the Congress (or the presenting House) can stand on personal presentation or its equivalent (delivery to an aide in the immediate vicinity of the President), or it can establish its own system of presentation, other than personal, in which the President can acquiesce so long as he wishes.

[12] In the Legislative Reorganization Act of 1946, Rule XI of the Rules of the House of Representatives was amended to provide that the Committee on House Administration should present enrolled bills, "when they shall have originated in the House, to the President of the United States *in person*, and report the fact and date of such presentation to the House." 60 Stat. 812, 826 (emphasis added). The provision in the 1946 Act for the Senate Committee on Rules and Administration was the same (60 Stat. 812, 820), but apparently has since been changed. Section 106 of Title 1 of the U.S. Code directs that enrolled bills shall be "sent to the President of the United States".

When the Congressional system becomes inconvenient or burdensome to him, the President is free to proffer his own method or to demand personal presentation (or the equivalent). In any event, the President's time to consider the bill begins with its presentation to him under this scheme. The sum of it is that a President who desires to do so can initially determine how and when bills are to be presented to him, but his choice is always subject to be overridden by a Congress which wishes to accelerate presentation by personal delivery to the President or his immediate entourage.

For a President embarking on a trip abroad, there are various choices. He can, if he is adamant, demand that the Congress make personal presentation to him abroad or delay until his return. It is more likely that he will direct that bills be accepted at the White House as if he were present, or that they be forwarded by his staff for presentation to him overseas, or that they be held at the White House to await his homecoming. Presumably the last alternative will be used when the foreign journey is expected to occupy the President's full time so that consultation on legislative matters would be inconvenient or impossible. The Congress may well accede to the arrangement the President selects. But if Congress (or the presenting House) is dissatisfied with that plan and cannot induce the President to modify it, the Congress always has the option of itself sending the bill abroad and presenting it to the President (who has to make himself reasonably available for that purpose).

In this way there is full play to the overall constitutional mechanism of checks and balance as incorporated into the veto provisions. "[A]s bills multiply" (*Edwards* v. *United States*, *supra*, 286 U.S. at 493) and legislative sessions lengthen, the Congress cannot forestall the President from enjoying the full span allowed him by the Constitution (if he wishes it) by employing a "presentation," not to *him*, but to his "home office" while he is away and otherwise occupied.[13] On the other hand, Congress can, if it wills, prevent a President—insufficiently attentive to legislative needs or

[13] Similarly, if the Congress were meeting outside of Washington, see footnote 8, *supra*, the President could not return a bill without his approval by sending it to the Capitol in Washington—unless there was an arrangement or understanding to that effect.

desirous of unduly delaying his action on a bill—from using the device of an absence from Washington or the country as an excuse for postponing action; Congress can start the constitutional period running by seeking out the President and presenting the bill to him wherever he is. The separate action of the President and of Congress need not wait upon agreement with the other; nor can the hostility of one deprive the other of rights. Each side can take independent steps to preserve the interests granted it by the Constitution. In a time of political or ideological combat between legislative and executive, the President need not curtail trips abroad which he considers necessary out of fear that the Congress will immediately deliver to the White House bills it feels he might reject if he had the time. Congress, on the other hand, need not worry that a hostile President will unnecessarily absent himself from Washington so as to delay, for unacceptable motives of his own, his action on bills or in order to await the end of the session (with its weapon of a pocket veto).[14] The President, when he feels it important, can set the time of presentation so that it will not interfere with other activities abroad (or outside of Washington) and thus require the Congress to take affirmative action to present the bill to him personally if it dislikes the arrangement he makes. Congress, when it desires earlier presentation, can always arrange, itself, to present the measure to the President wherever he is.[15]

We are not barred from adopting this reading of the Constitution by the history of, or the practice under, the veto provisions. As with other problems in this area, the proceedings in the constitutional and ratifying conventions are of little aid in solving the particular problem before us. *Cf. The Pocket Veto Case*, *supra*, 279 U.S. at 675; *Edwards* v. *United States*, *supra*, 286 U.S. at 487. Nor is the teaching of presidential practice more helpful. When the President

[14] To avoid pocket vetoes, Congress can also prolong its sittings until the beginning of the next session. This was done during Reconstruction days. See McKitrick, *Andrew Johnson and Reconstruction* (1960), pp. 12, 277, 499.

[15] We have noted above that it is a postulate of the constitutional provision regarding the veto that the President shall hold himself reasonably available for personal presentation, if that would be speedier than the method he himself selects. Delivery to an authorized aide in the President's immediate entourage would undoubtedly be equivalent to personal delivery to the President.

has been in the country, the assumption of the White House staff seems to have been (at least in recent years) that delivery to the Executive Mansion necessarily constituted presentation, even though the President might be at a distant point and may have desired to postpone presentation until his return to Washington. See findings 15, 17, 23. This assumption appears, however, to have sprouted without much testing or formal consideration. The routine method of presentation through delivery to the White House seems to have been accepted without question during presidential travels within the United States and, so far as we know, no efforts have been made at those times to limit or withdraw the authority of the legislative clerks at the White House to receive bills. This routine continuance of the regular procedure during the President's domestic travel, apparently because it did not cause any grave inconvenience, must be classed as a "precautionary practice" (*United States* v. *Weil*, *supra*, 29 Ct. Cl. at 548) rather than a "determinative" one (*Edwards* v. *United States*, *supra*, 286 U.S. at 487). "The question now raised has not been the subject of judicial decision and must be resolved not by past uncertainties, assumptions or arguments, but by the application of the controlling principles of constitutional interpretation." *Wright* v. *United States*, *supra*, 302 U.S. at 597–98.

The practice during the overseas absences of Presidents Wilson, Franklin D. Roosevelt, Truman, and Eisenhower is inconclusive, but we think that it indicates, at the least, that each of those Presidents acted, at one or another time, contrary to the assumption that delivery of a bill to the White House necessarily constituted delivery to the absent President.[16] President Wilson signed four bills, of the five forwarded to him abroad, more than ten days (Sundays excepted) after their delivery to the White House. President Roosevelt vetoed one bill, and signed two, more than the constitutional period after their delivery to the White House; before one of his wartime trips he specifically informed the Vice President and the Speaker that "the White

[16] The details of the overseas practice of these Presidents, so far as we know it, are set forth in findings 12–23. We have no information on the practice during President Kennedy's administration or whether the problem was a "live" one at that time.

House Office will not receive bills or resolutions on behalf of the President but only for the purpose of forwarding them. As soon as received by the President their presentation to the President will have been completed in accordance with the terms of the Constitution." In addition, with respect to several bills received during President Roosevelt's absences he took pains to indicate that they had been presented to him later than the day they were received at the White House. President Truman signed four bills and vetoed one bill, and possibly three others, more than ten days (Sundays excepted) after delivery to the White House; in his case, too, many of the bills forwarded during his absences have a notation that they were "presented to the President" on some date following that of the delivery of the bill to the White House. President Eisenhower's practice during his 1959 trip, involved here, shows that he considered the bills received during that period not to be presented to him until his return; on an earlier trip (in 1955) the White House received the bills "for forwarding to the President"; on a later trip (in 1960) bills were also received at the White House "for presentation to the President upon his return to the United States." These instances do not prove any binding custom as to the precise meaning of "presentation," but they do show that there is no positive custom or practice that delivery to the White House amounts to presentation when the President has indicated otherwise. They also show that the Presidents have not always felt bound to make arrangements with Congress as to the form of presentation. Insofar as Presidents, while abroad, have attempted to pass on many bills within the constitutional period after delivery at the White House, their actions appear (in some instances at least) to indicate "the existence of doubt and the desire to avoid controversy." See *Edwards* v. *United States*, *supra*, 286 U.S. at 487.

For like reasons we find nothing conclusive in the Congressional treatment of bills delivered to the White House during a President's absence. Even if Congress had consistently treated such bills as presented to the President, that handling would not create a binding custom or practice in view of the different presidential treatment of such bills. Neither Congress nor the Executive, alone, can create in this area a deter-

minative practice. But the fact is that the Congressional handling of these measures has not been uniform. Sometimes the House has phrased its Journal or Congressional Record entries as reflecting the delivery of a bill to the White House for presentation to the President or for forwarding to the President or for the President's approval; sometimes the House phraseology indicated, as in the ordinary case, that the measure had been presented to the President. The Senate seems to have used the latter phrasing consistently. Both because the Congress cannot unilaterally establish a binding custom on this point and because the Congress has not followed a uniform policy, we conclude that there has not been "a practical construction so positive and consistent as to be determinative." *Edwards* v. *United States*, *supra*, 286 U.S. at 487.

II

Under the principles discussed in Part I, there is no doubt that President Eisenhower's veto of H.R. 2717 was timely. He was free to decide, as he did, that during his absence bills would be received at the White House only for presentation to him upon his return to the United States. The Congress was informed of this procedure by a presidential aide before the President departed. It was also told of the change in practice via the stamps which were prepared for the bills themselves and for the receipts, on delivery of the bills to the White House. The Congress, if it did not agree, could have sent the bills to the President in Europe. But it did not take that course. Aware through its leadership of the President's new arrangement, the House sent its messenger to deliver H.R. 2717 at the White House. When it was again informed through the stamp that presentation would be delayed until the President's return, the House took no action to accelerate presentation. By failing to take the one step which would have had that effect—sending the bill abroad through its own messenger—the House must be taken to have acquiesced in the President's new arrangement.[17]

[17] Plaintiff mistakenly relies on the holding in *Wright* v. *United States*, *supra*, 302 U.S. 583, that the President could return a bill to the Senate, during a three-day recess of that body, by delivering it to the Secretary of the Senate. In *Wright*, the Secretary was "the accredited agent of the legislative body" (*id.* at 590), authorized to receive such messages from the Presi-

Nothing turns on the mistake of the White House legislative clerk in failing to use the new stamp on H.R. 2717, and the receipt therefor, when the bill was first delivered. The clerk did not have authority to accept the bill for immediate presentation to the President; his prior authority, used while the President was in this country, had been withdrawn and new instructions issued. Congress had earlier been informed of this change. Under the new directions the clerk was powerless to accept the bill on any terms other than for presentation to the President on his return. Moreover, the mistake was corrected within three hours and the House was in no way prejudiced. It is appropriate to note, again, that "the Constitution is not a code of administrative procedure, but a frame of government." *United States* v. *Weil*, 29 Ct. Cl. 523, 546 (1894).

Similarly, it is unimportant that the House Journal and the Congressional Record indicated that H.R. 2717 was presented to the President for his approval on the day the bill was delivered to the White House. Since the House had been informed of the President's special arrangement during his absence—in general, before his departure, and with specific reference to H.R. 2717, on the same day it was delivered to the White House—the House could not unilaterally declare that the routine procedure was nevertheless effective. Moreover, the habitual wording of these entries is counterbalanced by the habitual actions of the Congress upon receipt of the veto message. The House, the originating body, recorded the vetoes (105 Cong. Rec. 19697) and took no further action. The Senate later included H.R. 2717 in a list of vetoed measures.[18]

For these reasons, we hold that plaintiff is not entitled to recover and that its petition is dismissed.

WHITAKER, *Senior Judge*, concurring:

I am in thorough agreement with the conclusion reached by the majority in this case, and with most that is said in

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dent, while the legislative clerk in the present case was neither accredited nor authorized. See Corwin, *The President*, *supra*, at p. 280; *Building Commission* v. *Jordan*, 254 Ala. 433, 48 S. 2d 565 (1950); *Cammack* v. *Harris*, 234 Ky. 846, 29 S.W. 2d 567 (1930).

[18] See "Presidential Vetoes: List of Bills Vetoed and Action Taken Thereon by the Senate and House of Representatives, First Congress through the Eighty-Sixth Congress, 1789–1961" (G.P.O. 1961).

justification of this conclusion. However, since there are some expressions and some inferences and some reservations in it with which I am not wholly in accord, I file this concurring opinion. For instance, I think by long-continued usage, presentation to the White House constituted presentation to the President, and that this usage could not be set aside without prior notification to the Congress. Nor do I think it was necessary for Congress to acquiesce in setting it aside. The majority opinion does not so hold, at least not explicitly.

My discussion of the question follows:

We are presented with a novel situation in this case. There are no court decisions on the question presented. The question is, what constitutes presentation to the President of a Bill passed by Congress, within the meaning of Section 7 of Article I of the Constitution, which reads:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. * * * If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Presentation starts the running of the 10-day period, so the question is, what constitutes presentation to the President?

The purpose of the constitutional provision is to give the President a period of 10 days (Sundays excepted) within which to consider the legislation and, within that time, to express his approval or disapproval, if he cares to do so. Since a full 10 days (Sundays excepted) are allotted to him for consideration, it would seem to follow, necessarily, that he might require that the Bill be presented to him in person, in order that he might have the full time.[19] My conclusion in this case is based on that premise.

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[19] *Edwards* v. *United States*, 286 U.S. 482 (1932).

Having that prerogative, it would seem also to follow that, in case he did not desire personal presentation, he had the right to determine the way in which substitute presentation should be made, provided only that this was not more onerous than personal presentation. His determination of the manner of presentation, of course, had to be communicated to Congress, so that that body might comply with its duty to present Bills to the President for his consideration.

Having the right to prescribe the way in which presentation should be made in the first instance, he had the right to change the way from time to time, but, again, he was required to notify Congress of any change, in order that Congress might discharge its constitutional duty.

In the absence of formal notification to Congress of the substitute for personal service, established usage would seem to determine the method of presentation.[20]

Presentation by Congress in the way prescribed marks the beginning of the 10-day period.

These propositions would seem to be fundamental and should guide us to a proper solution of the question presented in this case.

For at least 40 years, no doubt for a much longer time, enrolled Bills have not been presented to the President in person, except in the case of the Bank Holiday Bill of 1933 and Bills passed on the eve of *sine die* adjournment of the Congress. The usage has been for the Committee on Administration of either the House or the Senate, after the Bill has been signed by the Speaker of the House and the Presiding Officer of the Senate, to send a clerk to the White House with the enrolled Bill and deliver it to a legislative clerk in the records office of the White House, who signs a receipt for it. The Committee on Administration then reports to the House or Senate "that this day they presented to the President of the United States, for his approval, the following Bills."

For many years this has been understood to constitute presentation to the President. Usage requires us to hold that it complies with the constitutional requirement for presentation to the President, unless in the instance of any particular Bill, including the particular Bill here under

[20] *Pocket Veto Case*, 279 U.S. 655, 689 (1929).

consideration, action was taken by the President to notify Congress that some other mode of presentation would be required, either personal presentation or otherwise.

Before he left the country on August 26, 1959, the President gave adequate notice to Congress that delivery of enrolled Bills to the White House would not constitute presentation of such legislation to him. H.R. 2717, the Bill involved in this case, was one of the Bills delivered during that period.

This was the second occasion on which President Eisenhower had considered the problem of presentation to him of enrolled Bills during his absence from the United States. Before he departed for the Geneva Conference on July 15, 1955, he had asked the advice of Attorney General Brownell on the proper handling of Bills passed by both Houses of Congress while he was away. The Attorney General had suggested that arrangements be made with Congress so that enrolled Bills would be held until his return or delivered to the White House "for forwarding to the President." The findings do not show whether the President, or his representative, discussed the matter with Congress, but they do show that all Bills delivered to the White House during this time were stamped "Received for forwarding to the President."

Prior to his departure on August 25, 1959, President Eisenhower instructed his staff to stamp all Bills delivered to the White House during his absence: "Held for presentation to the President upon his return to the United States." This decision was informally communicated to congressional leaders, at the President's direction, by his Deputy Assistant for Congressional Affairs.

Since the President had the right to require personal presentation to him, he had the right to notify Congress that during his absence the accustomed substitute would not be acceptable.

When he advised Congress that delivery of Bills to the White House would not be deemed presentation to the President, President Eisenhower followed the example of his predecessors. For example, when President Franklin D. Roosevelt was preparing to leave the country for an extended stay in 1943, he requested advice from his Attorney General as to the proper handling of Bills passed by Congress.

The Attorney General advised him in part:

> The practice of receiving bills at the White House and forwarding them for presentation may also require a measure of cooperation. Probably the custom of treating delivery to the White House as presentation to the President should be negatived by informal Presidential advice to the Vice-President and the Speaker that persons at the White House will, during a given period, be authorized only to forward, and not to receive on behalf of the President, enrolled bills. Such directions should be reflected in the reports of the Committee on Enrollment to their respective Houses announcing the date of presentation of bills to the President.

In rendering this advice, Attorney General Biddle adverted to a practice during President Wilson's administration of varying the form of the report of presentation in the *Congressional Record*, when the President was outside of the country, notifying the originating House that the Bill had been delivered to the White House, instead of to the President.

Upon receipt of this advice, President Roosevelt sent a memorandum to the Vice President and the Speaker of the House of Representatives, reading as follows:

> As I expect to be away from Washington for some time in the near future, I hope that insofar as possible the transmission of completed legislation be delayed until my return. The White House Office, however, in other cases of emergency has been authorized to forward to me any and all enrolled bills or joint resolutions. They will be forwarded at once by the quickest means. The White House Office will not receive bills or resolutions on behalf of the President but only for the purpose of forwarding them. As soon as received by the President their presentation to the President will have been completed in accordance with the terms of the Constitution. *I suggest, therefore, that if any bill is forwarded to the White House, the entries on the House and Senate Journals show "delivery to the White House for forwarding to the President".*
>
> For security reasons I hope that this can be kept confidential for as long as is necessary. [Emphasis in original.]

Since the President had the right to require personal presentation, President Roosevelt was fully justified in notify-

ing Congress that the customary usage of treating delivery to the White House as presentation to the President would not be followed, and in prescribing a different procedure during his absence from the country. The essential element of notification to Congress of the change was fully complied with. Had this been omitted, I think the change in procedure would have been ineffectual.

President Truman, who succeeded to the Presidency upon Mr. Roosevelt's death, did not, prior to his departure for the Potsdam Conference in 1945, take action similar to that of his predecessor in his memorandum to leaders of Congress. Nonetheless, President Truman acted on a number of Bills more than 10 days (Sundays excepted) after delivery to the White House but within 10 days (Sundays excepted) after his return. He may have done so with the understanding that the procedure to be followed during the President's absence, as set out in President Roosevelt's 1943 memorandum, would continue in force during his administration. The Roosevelt memorandum, however, seems to relate only to the particular absence then in contemplation and does not appear to have been intended to apply to any others. But the reasons for the procedure there prescribed would seem to be equally applicable to an absence of any future President, quite as much as to Mr. Roosevelt. In any event, it is clear that President Truman did not regard presentation to a clerk at the White House while he was absent from the country as presentation to him. The Congress appears to have been of the same opinion, for it gave the same treatment to Bills that Mr. Truman purported to veto as it did to all other vetoed legislation. They were referred back to Committee; Congress took no further action upon them, and they were not published as laws.

The record does not show that the procedure during the Truman administration was based on formal notification to Congress that the custom of treating presentation to the White House as presentation to the President would not be followed during his absence; however, we need not concern ourselves with this for it is indisputable that, with regard to the Bill presently before us, President Eisenhower advised Congress that, during his absence from the country, delivery to the White House would not be considered presentation to

the President, and that, if Bills were delivered to the White House, they would be stamped, "Held for presentation to the President upon his return to the United States."

After that notification was given, H.R. 2717, the Bill here in question, was delivered to the White House on August 31, 1959. The President returned it to the House in which it originated on September 14, 1959, with his objections to it. He had returned to the United States on September 7, 1959.

No action was taken by Congress to present the Bill to the President other than delivery of it to the White House. But the President had notified Congress that he would not accept this as the equivalent of personal delivery to him. Since he had the right to insist on presentation to him in person, it must be held that it was not "presented to the President" prior to his return to this country on September 7, 1959. He vetoed it within 10 days thereafter. In my opinion it never became law.

FINDINGS OF FACT

The court, having considered the evidence, the report of Trial Commissioner Lloyd Fletcher, and the briefs and argument of counsel, makes findings of fact as follows:

I. THE NATURE OF THE CASE AND THE ISSUE PRESENTED

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with offices at 3200 Monroe Avenue, Rochester 18, New York. On or about July 14, 1952, plaintiff filed claims for refund of Federal income taxes paid by it for the fiscal years 1947, 1948, 1949, and 1950, on the ground that, contrary to the decision of the Tax Court of the United States in *Thomas E. Wood*, 16 T.C. 213, it had erroneously reported as ordinary income, rather than as capital gains, profits derived by it from the sale of whiskey warehouse receipts in each of said years. The claims for refund for the fiscal years 1949 and 1950 were allowed and paid by defendant. The claim for 1947 was wholly rejected and that for 1948 rejected in part on the ground that the claim for 1947 and a portion of the claim for 1948 had not been filed within the time allowed by law.

2. On January 15, 1959, "A Bill for the Relief of Eber Brothers Wine and Liquor Corporation" (H.R. 2717, 86th Congress) was introduced in the House of Representatives of the Congress of the United States. That Bill provided as follows:

> * * * That notwithstanding any Statute of Limitations, including the limitations of section 322(b) of the Internal Revenue Code of 1939, the Eber Brothers Wine and Liquor Corporation of Rochester, New York, shall be permitted to file its claims under section 322 of the Internal Revenue Code of 1939 for the refund of overpayments of income taxes for fiscal years 1947 and 1948 which resulted from the fact that profit from the sale of certain warehouse receipts was treated as ordinary income when, subsequently, it was established that such income should have been accorded capital-gains treatment under the law; and if those claims are found to be meritorious, authority is hereby provided for the payment of such refunds. * * *

H.R. 2717, 86th Congress, without amendment, was passed by the Congress of the United States in that it was adopted by the House of Representatives on March 17, 1959, and in identical form by the Senate on August 27, 1959. It was properly enrolled under the procedures of the Committee on House Administration and thereafter presented to and signed by the Speaker in open session of the House. These actions were reported on page 16021 of the *Congressional Record* for August 31, 1959, in material part, as follows:

> ENROLLED BILLS AND JOINT RESOLUTION SIGNED
>
> Mr. Burleson, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:
>
> * * * * *
>
> H.R. 2717. An act for the relief of Eber Bros. Wine & Liquor Corp.

In accordance with established procedure, the bill was then sent to the Presiding Officer of the Senate who signed and returned it to the Committee on House Administration for transmission to the White House. H.R. 2717 was de-

livered to the White House on August 31, 1959, under the circumstances more particularly described below. It was returned to the House by the President with a veto message on September 14, 1959, and was not reconsidered by the House nor published as a private law.

3. On or about November 25, 1959, the plaintiff filed claims with the District Director of Internal Revenue, Buffalo, New York, for the refund of the amounts claimed as overpayment of taxes on income for the fiscal years 1947 and 1948. The District Director of Internal Revenue issued a notice of disallowance of the claims for refund on or about January 6, 1960. This suit was timely filed thereafter.

4. If H.R. 2717 became law without the signature of the President on September 11, 1959, plaintiff is entitled to a refund for the overpayment of income taxes in the amount of $117,748.77 for fiscal year 1947 and $32,885.71 for fiscal year 1948, or a total amount of $150,634.48, plus interest from the date the claims were filed with the Internal Revenue Service. If H.R. 2717 did not become law without the signature of the President on September 11, 1959, and was validly vetoed by the President on September 14, 1959, the plaintiff's claims for refund of taxes are barred by the statute of limitations and plaintiff is not entitled to recover in any amount from the United States.

II. THE DELIVERY OF H.R. 2717 TO THE WHITE HOUSE ON AUGUST 31, 1959.

5. At least since 1931, and for some period of time prior thereto, the duration of which is uncertain, bills enacted by the Congress have not been delivered personally to the President but have been delivered by an agent of the Congress to one of the legislative clerks on the White House staff.[21] The customary procedures used by the House of Representatives in accomplishing delivery of its enrolled bills are

[21] A congressional employee with 40 years experience in handling of bills testified that he could recall only two instances of personal delivery of bills to the President. One instance was the Bank Holiday Bill of 1933 which was presented personally to the President by the chairman of the then Committee on Enrolled Bills, and the other was a practice in effect prior to the Supreme Court's decision in the so-called "Pocket Veto Case" of delivering enrolled bills personally to the President in the President's Room at the Capitol on the eve of a *sine die* adjournment.

handled by the Committee on House Administration. After a bill has been signed by the Speaker and Presiding Officer of the Senate, as described in finding 2, *supra*, the Committee prepares a receipt for the bill to be obtained from the White House at the time it is delivered there. The receipt is prepared on a standard form containing the following printed heading:

WHITE HOUSE

Washington, D.C.

RECEIVED from the Committee on House Administration of the House of Representatives the following enrolled House Bills:

* * * * *

At the same time, two copies of a Report [22] are prepared on another standard form, the printed heading of which reads, as follows:

COMMITTEE ON HOUSE ADMINISTRATION

House of Representatives

Washington, D.C.

REPORT

The Committee on House Administration report that this day they presented to the President of The United States, for his approval, the following Bills:

* * * * *

The bill (or group of bills) is then hand-delivered by a clerical representative of the Committee to the White House where the previously prepared receipt is signed by a legislative clerk in the Records Office at the White House. After obtaining the signed receipt, the Committee's representative returns it to the Committee for its files, and copies of the Report above described are turned over to the Journal Clerk and Congressional Record Clerk for printing.

6. The forms and procedures outlined above have not

[22] One copy of the Report is for the House *Journal* and the other for the *Congressional Record*.

varied substantially for at least the past forty years, and they were used and followed in the case of H.R. 2717 (to the extent indicated *infra*). It, and twelve other House Bills, were delivered to the White House at 4:05 p.m., on August 31, 1959, by Mr. John F. Haley, Assistant Clerk of the Committee on House Administration. These thirteen bills were receipted for at the White House by Mr. Tom Jones, one of the legislative clerks on the White House staff. Receipts for these bills were signed by him, bearing the date August 31, 1959, and the time 4:05 p.m., which receipts were returned to the House of Representatives by Mr. Haley. The following notation was thereupon made in the *Journal* of the House:

> Mr. BURLESON, from the Committee on House Administration, reported that that Committee did on this day present to the President for his approval a bill of the House of the following title:
>
> * * * * *
>
> H.R. 2717 * * * A bill for the relief of Eber Brothers Wine and Liquor Corporation * * *.

A similar notation appeared in the *Congressional Record* for August 31, 1959, at page 16022.

7. On the same day that H.R. 2717 was delivered to the White House, as above described, it was referred by the Executive Clerk of the Executive Office of the President at the White House to the Bureau of the Budget for processing and review by the Bureau and other agents of the President in the way in which bills normally are so processed and reviewed. On September 5, 1959, it was returned to the White House for action by the President with the recommendations of the Bureau of the Budget and the Treasury Department.

8. When H.R. 2717 was delivered to the White House on August 31, 1959, the President of the United States, Dwight D. Eisenhower, was outside the continental limits of the United States. He had departed this country on August 26, 1959, for an official visit to various North Atlantic Treaty Organization countries. He did not return to the United States until September 7, 1959.

Prior to his departure from the United States, and pursuant to recommendations by members of his staff, President Eisenhower decided upon the procedure for the handling of bills

received from the Congress during his absence. Shortly before his departure, a stamp was prepared containing on it language never before used on prior occasions of Presidential absence from the country. This language was "Held for presentation to the President upon his return to the United States." The legislative clerks on the White House staff were instructed to place this stamp on all bills and receipts therefor delivered by Congress to the White House after the President's departure from the country.

Also, prior to his departure, the President had sent his Deputy Assistant for Congressional Affairs, Mr. Bryce N. Harlow, to the Congress for the purpose of discussing the problem of legislation to be received shortly before his departure and during his absence. Mr. Harlow did discuss the matter with Congressional leaders, including the language of the stamp above quoted. However, the record does not disclose what was said in these discussions since, as the President's agent, Mr. Harlow did not deem it proper at the trial to disclose the detail of the conversations. See, also, finding 17.

9. The 13 bills, including H.R. 2717, delivered to the White House at 4:05 p.m. on August 31, 1959, were the first bills sent by the House of Representatives to the White House subsequent to the President's departure from the United States on August 26, 1959. As noted above, one of the legislative clerks on duty at the White House, Mr. Tom Jones, signed the receipt for these bills. However, although he had been instructed to do so, he forgot to stamp the receipt with the words "Held for presentation to the President upon his return to the United States." This oversight came to his attention at about 6:30 p.m. of the same day when Assistant Clerk Haley of the Committee on House Administration returned to the Records Office of the White House for the purpose of delivering another House bill, namely, House Joint Resolution 510. Again Mr. Haley dealt with Mr. Jones who, on this second occasion, in addition to signing the receipt and placing the date and time thereon, also rubber stamped the receipt with the words "Held for presentation to the President upon his return to the United States." Upon observing these stamped words, Mr. Haley said, "What is this; what is that?" During the

ensuing discussion, Mr. Jones realized that he had not placed the stamp on the receipt for the earlier 13 bills which included H.R. 2717. He requested Mr. Haley to get the receipt back to him for stamping but was informed by Mr. Haley that the receipt had already been placed in the files of the Committee, and the Reports attached thereto had already been turned over to the respective House clerks for printing in the *Congressional Record* and the House *Journal*.[22] Mr. Jones thereupon placed the stamped notation on small pieces of yellow paper and asked Mr. Haley to staple them to the White House receipt. Mr. Haley agreed to do so, and stated that he would inform the Parliamentarian of the House as to his course of action. On the following morning, Mr. Haley informed the Parliamentarian about the added language being used by the White House in order, as Haley put it, "that the House of Representatives be properly informed as to the change in procedure." On the advice of the Parliamentarian, Mr. Haley did not attach the stamped yellow sheets to the receipt for the 13 bills (including H.R. 2717) which Mr. Jones had forgotten to stamp with the "Held for presentation * * *" language.

The White House receipt prepared by Mr. Haley for House Joint Resolution 510 followed the same format as the receipt prepared for H.R. 2717 and the 12 other House bills delivered earlier that day. It is probable that the Reports of the Committee on House Administration for House Joint Resolution 510, being prepared in the same manner, followed the same format as the Reports of the Committee on House Administration prepared for H.R. 2717 and the 12 other bills. However, as noted above, the White House receipt for H.J. Res. 510 was stamped by Mr. Jones "Held for presentation to the President upon his return to the United States," and the *Journal* and *Congressional Record* entries reflecting the delivery of H.J. Res. 510 to the White House read "did * * * deliver to the White House for presentation to the President, for his approval * * *". This is in contrast to the entries reflecting the delivery of H.R. 2717 (and 12 other bills), the receipt for which Mr. Jones had forgotten to stamp with the "Held for presentation * * *" language. Those entries read

[22] The House had adjourned for the day at 4:48 p.m.

that the Committee on House Administration "did on this day present to the President for his approval * * *"

10. The enrolled bill H.R. 2717 which was delivered to the White House at 4:05 p.m. on August 31, 1959, bears three notations:

1. An oval stamp reading, "THE WHITE HOUSE/AUG 31 1959/RECEIVED";
2. A stamp reading, "Held for presentation to the President upon his return to the United States"; and
3. A stamp reading, "PRESENTED TO THE PRESIDENT SEP 7 1959."

The first two notations were placed on the enrolled bill by Mr. Tom Jones, or one of the other clerks in the Records Office of the White House, immediately or shortly after it had been delivered and the receipt therefor had been signed. The "Held for presentation" stamp was also placed on the "bill card" for H.R. 2717 although it is not known as to when or by whom this was done. A "bill card" is a White House record ordinarily maintained by the White House staff in the regular course of business, which reflects the date of receipt of the enrolled bill at the White House from the Congress, the date the bill is referred by the White House to the Bureau of the Budget, the date of receipt of the recommendations of the Bureau of the Budget, including the recommendations of other interested Government agencies, and the date and nature of the President's action.

11. The Congress was in session at all times material hereto, and did not adjourn until 6:24 a.m. on September 15, 1959. The President did not return H.R. 2717 with his objections to the House, where it originated, within ten days (Sundays excepted) after it was delivered to the White House on August 31, 1959. However, on September 14, 1959, the President signed a veto message stating his reasons for not approving H.R. 2717, and on the same day the bill was returned, accompanied by the veto message, to the House of Representatives. This action by the President took place more than ten days (Sundays excepted) from the time H.R. 2717 was delivered to the White House on August 31, 1959, but less than ten days (Sundays excepted) from the time of the President's return to the United States on September 7, 1959.

III. ACTIONS TAKEN ON OTHER BILLS DELIVERED TO THE WHITE HOUSE DURING PRESIDENT EISENHOWER'S 1959 EUROPEAN TRIP.

12. During President Eisenhower's absence from the continental limits of the United States between August 26, 1959, and September 6, 1959, inclusive, agents of the Congress delivered 49 enrolled Senate bills, 18 enrolled House bills, and 5 House Joint Resolutions to the White House. These 72 bills (including H.R. 2717) were delivered in each instance at the White House to one of the legislative clerks on the White House staff who gave receipts therefor. All of the receipts given for these bills, except for the receipts issued for the delivery of the 13 bills on August 31, 1959 at 4:05 p.m., of which H.R. 2717 was one, bore the notation "Held for presentation to the President upon his return to the United States." Each of the bill cards for the 72 bills also bears the notation "Held for presentation to the President upon his return to the United States." Each of the 72 enrolled bills delivered to and received by the White House during the period August 26, 1959 to September 6, 1959, inclusive, bears the oval stamp reading: "THE WHITE HOUSE/(date)/RECEIVED", and the stamp reading "Held for presentation to the President upon his return to the United States."

All of the bills were processed and reviewed by the Bureau of the Budget and other interested agencies in the normal way, which processing and review usually requires about 5 days after delivery of the bills to the White House. Following the delivery of H.R. 2717 and 12 other House bills to the White House at 4:05 p.m., on August 31, 1959, the delivery of all subsequent House bills during the President's absence from August 26, 1959 to September 6, 1959, inclusive, was reflected in the House *Journal* and *Congressional Record* as follows:

> did * * * deliver to the White House for presentation to the President, for his approval * * *.

Prior to the delivery of H.R. 2717 and 12 other House bills to the White House, the Senate had delivered four bills to the White House on August 27, 1959, and one bill on August 31, 1959, and receipts bearing the notation "Held for presentation to the President upon his return to the United States" were given therefor. The Senate *Journal* and *Con-*

gressional Record entries at all times during the President's absence in 1959 read "presented to the President of the United States, the following * * *."

13. All of the aforesaid 72 bills delivered to the White House during the President's absence from August 26, 1959, to September 6, 1959, inclusive, were acted upon by the President within ten days (Sunday excepted) from September 7, 1959, the date of his return to the United States. Also, with the exception of H.R. 2717 and S. 994, all of the 72 bills delivered to the White House during the aforesaid period were either signed or vetoed by the President within ten days (Sundays excepted) after delivery to the White House.[24]

14. S. 994 was delivered to the White House on September 2, 1959. The enrolled bill has 3 stamped notations on it reading: "The White House/Sep 2–1959/Received"; "Held for presentation to the President upon his return to the United States"; and "Presented to the President Sep 7 1959". Ten days (Sundays excepted) from the date of delivery of S. 994 to the White House expired on September 14, 1959. The President signed the bill on September 16, 1959, and it became Public Law 86–276. The Statutes at Large show the date of this law as September 16, 1959, the date the President signed the bill.

15. Near the end of a session of Congress, it is normally true that the number of bills sent by Congress to the White House will greatly increase. This was the situation at the time of President Eisenhower's trip to Europe here involved. In order to keep abreast of the increasing flow of bills, and in order to obtain Presidential action upon certain bills delivered to the White House (but not fully processed) prior to the President's departure, as well as upon some bills

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[24] Dependent upon the characterization to be given to the President's action, or inaction, it is possible that H.R. 6596 should be included as a third exception in this finding. According to the White House bill card on H.R. 6596, the bill was the subject of a pocket veto. If delivery of H.R. 6596 to the White House on September 3, 1959, was presentation of the bill to the President within the meaning of the Constitution, then the bill became the subject of a pocket veto on September 15, 1959, and H.R. 6596 is not an exception to the above finding. However, on September 16, 1959, the President signed a "Memorandum of Disapproval" of H.R. 6596, and the bill card indicates the date of pocket veto to be September 18, 1959. If the Presidential action of September 16 constituted the actual veto, then H.R. 6596 should be considered an exception to this finding along with H.R. 2717 and S. 994.

delivered thereafter which had received early administrative processing, the President's Special Assistant, Mr. Henry R. McPhee, went to Europe near the end of August 1959, for the purpose of conferring with President Eisenhower regarding bills which were deemed "ready" for Presidential action. Of the bills taken by McPhee to the President in Europe, 23 had been delivered by Congress to the White House prior to the President's departure from the United States. President Eisenhower signed one of those bills on August 29, 1959, and he either signed or vetoed the remaining 22 bills on September 1, 1959. As to these 23 bills delivered to the White House prior to the President's departure from the United States, Mr. McPhee testified that, in his opinion and in the opinion of the other persons on the White House staff who functioned as lawyers, the President had but ten days from the date of delivery to the White House in which to act on the bills. Because the President was in the United States at the time these bills were delivered to the White House, it was their collective opinion that the bills had been "presented to the President," and it was therefore necessary to take them to the President in Europe so that he could act upon them within ten days after the date of delivery to the White House.

In addition, six bills were taken to the President while he was in Europe, all of which had been delivered to the White House after his departure from the United States, and as to which, prior to Mr. McPhee's departure, the normal administrative review had been completed. Of these six bills, four were Senate private relief bills cancelling deportation orders or deeming persons to be lawfully admitted to the United States. All four were signed by the President on September 1, 1959. The remaining two bills in this group were House Joint Resolution 510 and S. 2539. H.J. Res. 510 which had been delivered to the White House at 6:30 p.m. on August 31, 1959,[25] (see finding 9, *supra*), was a continuing resolution providing for temporary appropriations and was signed by the President in Paris on September 3, 1959. S. 2539 was a bill relating to housing and renewal of urban communities which had been delivered to the White House

[25] H.J. Res. 510 had been sent by courier to Mr. McPhee in Paris and there delivered by him to the President.

on September 2, 1959. This bill was also delivered to the President in Paris on September 3, 1959, where on the same day he refused his approval and signed a veto message.[26] S. 2539 was returned to the Senate on September 4, 1959.

16. Except for the six bills referred to in the preceding finding, the President did not act upon any of the other 66 bills delivered by Congress to the White House during his absence from August 26, 1959, to September 6, 1959, inclusive, until after he had returned to the United States on September 7, 1959. The actions taken by the President on these remaining 66 bills after his return may be summarized as follows:

(a) Thirteen bills (including H.R. 2717) were delivered to the White House on August 31. Eight of these bills were signed on September 8, four were signed on September 9, and one (H.R. 2717) was returned to the House of Representatives with a veto message on September 14.

(b) Eighteen bills were delivered to the White House on September 2. Eight of these bills were signed on September 8, six were signed on September 9, three were signed on September 14, and one was signed on September 16.

(c) Twenty bills were delivered to the White House on September 3. Ten of these bills were signed on September 8, eight were signed on September 9, one was signed on September 14, and one pocket veto message was signed on September 16. (See finding 13, footnote 5.)

(d) Fifteen bills were delivered to the White House on September 4. Seven of these bills were signed on September 9, one was signed on September 10, five were signed on September 14, and two were signed on September 16.[27]

17. In addition to the stamp reading "Held for presentation to the President upon his return to the United States," the aforesaid 66 enrolled bills all bear a stamped notation

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[26] Special Counsel to the President, David W. Kendall, had also gone to Europe with Mr. McPhee to discuss with the President a possible veto of S. 2539.

[27] All 66 bills were reviewed by the Bureau of the Budget and other agencies concerned for the purpose of making recommendations thereon to the President. The time interval between receipt of such recommendations by the White House and the taking of action on the bills by the President may be summarized as follows:

(a) 32 bills had been returned to the White House for action by the President with the recommendations of the Budget Bureau and other interested departments before September 7. Of these, 26 were signed on September 8,

reading "Presented to the President Sep 7, 1959." With respect to the use on this occasion of both these stamps, the Deputy Assistant to the President, Mr. Gerald D. Morgan, and the White House Executive Clerk, Mr. William Hopkins, played important parts.

Prior to his departure, President Eisenhower had indicated his desire that, so far as possible, he wanted Congressional bills to be held in Washington until his return to the United States. Mr. Morgan and Mr. Hopkins discussed this matter and decided that, to accomplish the President's objective, the bills received during his absence should be stamped "Held for presentation to the President upon his return to the United States." This was the first time such wording had been used. Mr. Morgan was aware that, on previous occasions of a President's absence from the country during times Congress was in session, receipt stamps had been used by the White House reading in effect, "Received at the White House for forwarding to the President." However, he felt that such wording involved at least a moral obligation to forward bills which, in view of a tight and busy schedule in Europe, the President desired to avoid as far as possible. Therefore, the "Held for presentation" language was used instead of the "Received * * * for forwarding" language.

Also, Mr. Morgan and Mr. Hopkins decided that all bills received during the President's absence and stamped "Held for presentation" were to be stamped "Presented to the President Sep 7, 1959" which was the date of President Eisenhower's return to the United States. However, the stamp was not placed upon the bills at that time. Instead, it was

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six were signed on September 9, and one (H.R. 2717) was returned to the House of Representatives with a veto message on September 14;

(b) Ten were returned for action by the President on September 7, nine of which were signed on September 9 and one was signed on September 14;

(c) 14 were returned by the Budget Bureau for Presidential action on September 8, ten of which were signed on September 9, three were signed on September 14, and one failed to become law by virtue of a "pocket veto";

(d) Two were returned by the Budget Bureau for Presidential action on September 9, one being signed on September 14 and the other on September 16;

(e) One was returned by the Budget Bureau for Presidential action on September 10 and signed by the President on the same day.

(f) Three were returned by the Budget Bureau for Presidential action on September 11 and signed by the President on September 14;

(g) Three were returned by the Budget Bureau for Presidential action on September 12, one of which was signed on September 14 and two were signed on September 16.

stamped on each bill by a White House legislative clerk (such as Tom Jones) after it had been acted upon by the President and had been returned by the Executive Clerk to the Records Office for forwarding to National Archives in case of a signed bill, or to the originating house of Congress in case of a veto.

Although President Eisenhower did not personally attend to the details of the selection of the language on the "Held for presentation * * *" stamp or other administrative details in regard to the procedures to be followed, the President did in effect approve these procedures and did make the decision as to the handling of bills delivered during his absence. See finding 8.

IV. HISTORICAL FACTS REGARDING BILL PRESENTATION PROBLEM IN OTHER INSTANCES.

A. General

18. Prior to 1961, the only Presidents who had gone outside the continental limits of the United States while Congress was in session were Presidents Taft, Wilson, Coolidge, Franklin D. Roosevelt, Truman, and Eisenhower. Moreover, bills have been delivered to the White House by the Congress only during absences of Presidents Wilson, Roosevelt, Truman, and Eisenhower. Hence, the handling of bills delivered to the White House while the President is absent from the United States is a relatively recent problem.

19. During the absences from the United States of Presidents Wilson, Roosevelt, Truman, and Eisenhower, referred to in the preceding finding, a little over 800 bills were delivered to the White House while Congress was in session. The overwhelming majority of those bills were either signed or vetoed by the President then in office within ten days (Sundays excepted) after delivery of the bills to the White House by the appropriate Senate or House committee. Somewhere between one and two percent of the bills so delivered were signed or vetoed by the President in office at the time more than ten days (Sundays excepted) after delivery to the White House. Most of those bills acted upon by the President after the expiration of ten days (Sundays excepted) from delivery to the White House were approved, but a few were vetoed. Those vetoes were never challenged by Congress, or in the courts until the present case involving H.R. 2717.

B. President Woodrow Wilson

20. During President Wilson's absence from the United States for the period March 5, 1919 to July 8, 1919, five bills were delivered by Congress to the White House. The *Congressional Record* entries reflecting delivery of these bills state either "* * * presented to the White House, for the approval of the President * * *" or "* * * presented to the President of the United States, for his approval * * *" None of the bills contains the notation "Presented to the President." All five bills were forwarded to President Wilson and acted upon by him while he was outside the United States. One of them was signed within ten days (Sundays excepted) after its delivery to the White House, and the other four were signed more than ten days (Sundays excepted) after their delivery to the White House. The bills were published in the United States Statutes at Large as public laws bearing the dates on which the President signed them.

C. President Franklin D. Roosevelt

21. During his incumbency, President Roosevelt was outside the continental limits of the United States while Congress was in session on 19 different occasions. No bills were delivered to the White House during five of these trips. On the remaining 14 trips, however, 343 bills were delivered to the White House, and all but three[28] of those bills were signed[29] or vetoed within ten days (Sundays excepted) after the date of delivery to the White House.

Fifty-one of the 343 bills were delivered to the White House while President Roosevelt was outside the United States attending the Cairo and Teheran Conferences from

[28] A fourth possibility exists as to which the record is not clear. S.J. Res. 59 was delivered to the White House on November 18, 1943. Ten days (Sundays excepted) from November 18, 1943 expired on November 30, 1943. The President's veto message commencing "I return herewith, without my approval, S.J. Res. 59 * * *" bears the date of November 25, 1943. At the end of the veto message, there appears a notation in handwriting resembling the President's signature, which notation reads "This joint resolution was presented to me on Nov. 25, 1943." While it does not expresaly state the date on which the unsigned bill and veto message were returned to the Senate, the *Congressional Record* for December 1, 1943, contains a notation of messages received from the President, a notation of messages received from the House, and then the veto message for S.J. Res. 59.

[29] Sixty-five of the bills were signed by the President while he was outside the United States.

November 13, 1943 to December 16, 1943. This appears to have been the first time that the procedure was used of receiving a bill at the White House "for forwarding to the President."

Prior to the President's departure, the then Attorney General, Francis A. Biddle, by a memorandum dated November 10, 1943, advised President Roosevelt of his views on the constitutionality of various methods of handling bills delivered during a President's absence. In discussing the possibility of receiving bills at the White House for forwarding to the President, the Attorney General stated:

> The practice of receiving bills at the White House and forwarding them for presentation may also require a measure of cooperation. Probably the custom of treating delivery to the White House as presentation to the President should be negatived by informal Presidential advice to the Vice-President and the Speaker that persons at the White House will, during a given period, be authorized only to forward, and not to receive on behalf of the President, enrolled bills. Such directions should be reflected in the reports of the Committee on Enrollment to their respective Houses announcing the date of presentation of bills to the President. The usual practice is that the committee of the originating House makes the report, which is inserted in the Congressional Record. A special form appears to have been used on some occasions in the Record during President Wilson's absence. E.g., "Mr. Ramsey, from the Committee on Enrolled Bills, reported that this day they had presented to the White House for the approval of the President of the United States the following joint resolution and bill:" 58 Cong. Rec. 662. The usual form recites presentation "to the President." The variant there used would appear to be adequate as a technical matter, though it might be better to use the phrase "delivered to the White House for transmittal to the President" if not too conspicuous. There remains the problem of public misapprehension as to the running of the 10-day period. If announcement of the President's absence were made within 10 days of the delivery of the bill to the White House, such misapprehension would be avoided.
>
> Upon receipt of a bill at the White House, it might be withheld instead of being forwarded forthwith, particularly where circumstances made its ultimate delivery or ultimate timely return unsure, or where the time

required for return would largely consume the period intended for deliberation. Here too some appropriate form of report for the Record would be necessary—*e.g.*, "delivered to the White House for presentation to the President [on his return]." The bracketed words could be used if prior announcement of absence had been made.

In a Memorandum for the Vice-President and the Speaker of the House dated November 10, 1943, President Roosevelt stated as follows:

> As I expect to be away from Washington for some time in the near future, I hope that insofar as possible the transmission of completed legislation be delayed until my return. The White House Office, however, in other cases of emergency has been authorized to forward to me any and all enrolled bills or joint resolutions. They will be forwarded at once by the quickest means. The White House Office will not receive bills or resolutions on behalf of the President but only for the purpose of forwarding them. As soon as received by the President their presentation to the President will have been completed in accordance with the terms of the Constitution. *I suggest, therefore, that if any bill is forwarded to the White House, the entries on the House and Senate Journals show "delivery to the White House for forwarding to the President".*
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> For security reasons I hope that this can be kept confidential for as long as is necessary. (Emphasis in original.)

The 51 bills received at the White House during this period were the subject of entries in the *Congressional Record* reading, in case of the House, "did deliver to the White House for forwarding to the President for his approval * * *", and reading, in case of the Senate, "presented to the President of the United States the following * * *". On several of these, there appears, either on the enrolled bill itself or on the veto message in certain instances, the notation "Presented to me" followed by a date differing from the date of delivery to the White House and usually, but not always, the same as the date upon which the President acted upon the bill. It is not disputed that President Roosevelt acted upon two of these 51 bills more than ten days (Sundays excepted) after their delivery to the White House.

H.R. 1155 was delivered to the White House on November 12, 1943. Ten days from that date (Sundays excepted)

expired November 24, 1943. H.R. 1155 was returned unsigned with a veto message on December 1, 1943. The bill is stamped with a White House receipt stamp under which is a handwritten notation "For Forwarding." The veto message is dated November 25, 1943, and bears a handwritten notation, "This bill was presented to me on Nov. 25."[30] Except for referral back to committee, the House took no further action on H.R. 1155, and it was never published as law.

S. 861 was delivered to the White House on December 4, 1943. Ten days from that date (Sundays excepted) expired on December 16, 1943. President Roosevelt signed the bill on December 17, 1943. Above his signature in handwritting resembling the signature are the notations "Presented to me/Dec. 17, 1943/Approved/Dec. 17, 1943." S. 861 was published in the United States Statutes at Large as Public Law 202, bearing the date December 17, 1943.

The only other bill out of the 343 bills delivered to the White House during President Roosevelt's absences which he signed or vetoed more than ten days (Sundays excepted) after delivery to the White House was S. 338.[31] This bill was delivered to the White House on February 15, 1945, while President Roosevelt was attending the Crimea-Yalta Conference. Ten days from that date (Sundays excepted) expired on February 27, 1945. The President signed the bill on February 28, 1945. It contains a handwritten notation (obviously not the handwriting of the President) reading "Presented to the President/February 28, 1945." S. 338 was published in the United States Statutes at Large as Public Law 12, bearing the date February 28, 1945.

D. President Harry S. Truman

22. During his incumbency, President Truman was outside the continental limits of the United States while Congress was in session on eight different occasions. During three of these eight trips, 93 bills were delivered to the White House. No bills were delivered during the other trips. The great majority of these bills were delivered during President

[30] Both the handwritten notations on the bill and on the veto message bear a resemblance to the President's signature. However, there is no evidence in the record with respect to this.

[31] Cf. comment on S.J. Res. 59 contained in footnote 9, *supra*.

Truman's absence from the United States July 6, 1945 to August 7, 1945, while attending the Potsdam Conference. More than three-fourths of these enrolled bills bear a notation in the left margin reading "Presented to the President", followed by a date differing from the date of delivery of that bill to the White House, and being the same date the President acted upon the bill. They contain no qualifying receipts or stamps such as "Held for presentation to the President upon his return to the United States," "Received for forwarding to the President," and the like. The *Congressional Record* reflected the delivery of the House bills with the language "did on ------(date)------- present to the President for his approval * * *" and the Senate bills with the language "presented to the President of the United States the following * * *"

It is undisputed that all but eight of the 93 bills delivered to the White House while President Truman was outside the United States were signed or vetoed by the President within ten days (Sundays excepted) after the date of delivery of the bills to the White House. Of the 80 bills delivered during the Potsdam trip, all but four were signed or vetoed by President Truman on various dates while he was outside the United States.

The eight bills regarding which the parties do not agree as to the nature of the Presidential action thereon are H.R. 246, H.R. 2866, H.R. 3175, H.R. 2699, H.R. 3549, H.R. 3477, H.R. 952, and H.R. 1856. It is agreed that H.R. 246, H.R. 2866, and H.R. 3175 were delivered to the White House on Monday, July 23, 1945, and that H.R. 2699 was delivered to the White House the following day. On the face of these four enrolled bills appears the notation "Presented to the President/August 8, 1945," and President Truman signed these bills on August 8, 1945.

The House of Representatives, pursuant to House Concurrent Resolution 68, had adjourned conditionally on July 21, 1945. House Concurrent Resolution 68 provided for adjournment until October 8, 1945, unless the President *pro tempore* of the Senate and the Speaker of the House of Representatives should sooner notify the members to reassemble. The Senate adjourned conditionally on August 1, 1945. The Congress reassembled on September 5, 1945, and the

first session of the 79th Congress was not adjourned *sine die* until December 21, 1945.

The plaintiff considers that H.R. 246, H.R. 2866, H.R. 3175, and H.R. 2699 must be deemed as signed (approved) by the President, and they were, in fact, published in the United States Statutes at Large as Private Laws 184–187, each bearing the date of August 8, 1945. On the other hand, defendant suggests that because of the "conditional adjournment" of Congress referred to above, these four bills may have been pocket vetoed if the date of delivery to the White House were the date of presentation to the President within the meaning of the Constitution.[32]

H.R. 3549 was delivered to the White House on July 18, 1945. Ten days from that date (Sundays excepted) expired on July 30, 1945. President Truman returned the bill to the House of Representatives without signing it and with his veto message dated July 31, 1945. The unsigned bill and veto message were returned to the House on August 4, 1945. The bill and the message were referred back to committee, and no further action was taken by Congress.

H.R. 3477 was delivered to the White House on July 18, 1945. The enrolled bill has a stamped notation in the left margin reading "Presented to the President/July 28, 1945," with the numeral "28" written in ink. President Truman's message of disapproval commencing "I return herewith, without my approval, H.R. 3477 * * *" is dated July 28, 1945, with the numeral "28" again written in ink. The *Congressional Record* entry reflecting the return of the unsigned bill indicates that the bill and veto message were received in the office of the Clerk of the House of Representatives on July 31, 1945, and delivered by the clerk to the Speaker on September 5, 1945. The bill and veto message were referred to committee, and the House took no further action with respect to H.R. 3477. Ten days from the date

[32] When the signed bills were transmitted to the State Department for numbering and promulgation as laws, this legal question was considered, and according to a file memorandum of August 8, 1945, it was finally decided that if the question whether these four bills were pocket vetoes or laws should arise after promulgation of the bills as laws, it would be up to Congress and the White House to defend their positions and that the question was one that would have to be decided by the courts. Thereupon, it was determined to publish the bills as laws "in the usual manner."

of delivery of H.R. 3477 to the White House (Sundays excepted) expired on July 30, 1945.

H.R. 952 and H.R. 1856 were delivered to the White House on July 23, 1945. Ten days from that date (Sundays excepted) expired on August 3, 1945. The two enrolled bills have notations in the left margin stating "Presented to the President/July 31, 1945." President Truman's veto messages commencing "I return herewith without my approval * * *" each bear the date July 31, 1945. According to the *Congressional Record* entries, the unsigned bills and veto messages were returned to the House on August 4, 1945, and August 5, 1945, respectively.

E. President Dwight D. Eisenhower

23. During his incumbency, President Eisenhower was outside the continental limits of the United States while Congress was in session on ten different occasions. During eight of these ten trips, 371 bills[33] were delivered to the White House. No bills were delivered during the other two trips. With the exception of H.R. 2717 (the bill at issue herein), S. 994, and possibly H.R. 6596,[34] all of the bills delivered to the White House while President Eisenhower was outside the United States and Congress was in session were signed or vetoed by the President within ten days (Sundays excepted) after the date of delivery of the bills to the White House.

Prior to President Eisenhower's departure for the Geneva Conference on July 15, 1955, the then Attorney General, Herbert Brownell, Jr., in a letter to the President dated July 5, 1955, suggested that arrangements be made with Congressional leaders to hold enrolled bills in Congress until the President's return or, if the matter warranted immediate attention by the President, the entries on the House and Senate Journals should carry the statement "Delivery to the White House for forwarding to the President." He further recommended that the White House office be advised that it should not receive bills on behalf of the President but that the bills should be marked "Received for forwarding * * * to the President." However, while the White

[33] This figure includes the 72 bills previously discussed under heading III of these findings, *supra*.

[34] See the discussion of this possibility contained in footnote 5, *supra*.

House stamp "Received for forwarding to the President" was used on the 115 bills delivered during this trip, as well as on the White House receipts for the bills, the *Congressional Record* entries continued to read for the House bills "did on ------(date)------ present to the President for his approval * * *" and for the Senate bills "presented to the President of the United States the following * * *."[35]

Certain bills delivered to the White House during the President's 1960 Far East trip were stamped "Held for presentation to the President upon his return to the United States." Subsequently, these bills were stamped "Presented to the President on June 26, 1960," the date the President upon his return had arrived in Hawaii. This procedure was in keeping with the views of Mr. Morgan and Mr. Hopkins, referred to in findings 15 and 17, *supra*, that the "Held for presentation" stamp had the effect of tolling the ten-day period only until the President returned to the United States at which time the bills should be stamped "Presented to the President" with the date of his arrival in the United States.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is not entitled to recover and its petition is therefore dismissed.

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[35] The entries in the *Congressional Record* were the same in the case of all but 17 of the 371 bills delivered to the White House during President Eisenhower's absences from the United States. In the case of these 17 bills, the entries read "did on (*date*) deliver to the White House for presentation to the President, for his approval * * *".

APPENDIX C

(See Opposite ☞)

Memorandum of Attorney-General Brownell

July 5, 1955

The President,

The White House.

My dear Mr. President:

It is suggested that you confer with leaders in Congress so that arrangements can be made under the law for enrolled bills or joint resolutions to be held in Congress until your return.

In this way, your attention to the important matters raised in Summit Talks will not be diverted by consideration of bills which may safely await your return.

If Congressional leadership believes that the matter is serious enough to warrant your immediate attention, it should be advised to forward the bill to the White House with this understanding:

1. That the entries on the House and Senate Journals will carry the statement: "Delivery to the White House for forwarding to the President."

2. That the White House Office will be advised that it will not receive bills or resolutions on behalf of the President but they will only be "received for forwarding them to the President".

3. That where the President acts on an emergency measure his decision will be communicated not only by carrier but also by cable.

This procedure would be used in order that in event of a veto the Congress could receive as much notice as possible to permit it to act.

Respectfully,

Herbert Brownell, Jr.
Attorney General

Appendix C

Colloquy, 105 Congressional Record 19553-54 (September 14, 1959)

Purported Veto of House Bill 2717

Mr. Keating: Mr. President, I rise to propound a parliamentary inquiry: On March 17, 1959, the House of Representatives passed, and on August 27, 1959, the Senate passed, House bill 2717, for the relief of Eber Bros. Wine & Liquor Corp.

The bill was sent to the White House on August 31, 1959. However, I am informed that it was not brought to the President's personal attention, by his staff, until approximately 5 days ago. The President has today disapproved the bill and returned it here.

In view of the fact that the bill was delivered to the White House on August 31—more than 10 days ago—my first inquiry is whether more than 10 days have expired since the bill was presented to the President within the provisions of article I, section 7, of the Constitution.

The Presiding Officer: In response to the parliamentary inquiry, the Parliamentarian advises that, under the practice, if a bill is delivered to the President as of this date, the time would commence to run as of midnight tonight, in other words, counting tomorrow as the first day, Sundays excluded.

Mr. Keating: In other words, if the bill was delivered to the White House before midnight, August 31, 10 days would have expired by now?

The Presiding Officer: The time would start the next day after the 31st. That date would be the first day. The Chair does not have a calendar available here.

Mr. Keating: The ruling of the Chair is in accordance with my understanding. Do I understand from that statement that we are not operating under a procedure whereby

if the staff of the President held a bill and presented it to him personally at some later time, the 10 days would start running then?

The Presiding Officer: That is not a matter for the Chair to determine.

Mr. Keating: My second parliamentary inquiry, Mr. President, is whether the bill which was delivered to the White House on August 31, and has today been disapproved and returned here, automatically became law upon the expiration of the 10-day period, excluding Sundays, without being returned by the President to the Congress.

The Presiding Officer: The Chair is advised that the Constitution is clear on that point. Anything beyond what the Chair has answered is a matter for the courts to decide. The Chair has already said that if the bill is delivered before midnight, the first day would start on the day after midnight, and Sundays are excluded from the computation.

Mr. Keating: May I propound a third and final parliamentary inquiry?

The Presiding Officer: The Senator will state it.

Mr. Keating: My question is whether the status of a bill passed by the Congress is affected in any way by the President's purported veto of the bill this morning, more than 10 days after it was delivered at the White House.

The Presiding Officer: The Chair states that if the President has vetoed the bill, it being a House bill, it will go back to the House for further action. If the House overrides the veto, it will be submitted to the Senate, and there will be an opportunity to act upon it.

Mr. Keating: But my inquiry is whether the action of the President more than 10 days after the bill was delivered to him is an action which will be recognized by the Congress.

Appendix C

The Presiding Officer: The Senate is unable to act until the House has acted upon the matter. If the House overrides and sends the bill to the Senate with the message that the House has overridden the veto, that would be a matter for the Senate to determine.

Mr. Keating: My inquiry, which the Chair may be unwilling or should refrain from responding to, is this: Is any action by the Congress necessary if the President retains a bill for more than 10 days before he acts on it?

The Presiding Officer: According to the Constitution, the bill should become a law if it has not been acted upon within 10 days after it has been presented to the President. The matter of whether 10 days have elapsed is a question for legal determination, and not for the Chair to determine.